

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3668 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

OMPRAKASH SARDARILAL SHARMA

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
MR UR BHATT, A.G.P. for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/08/96

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India the petitioner- detenu has brought under challenge the detention order dated 16th March, 1996 rendered by the Second respondent under Section 3(1) of the Gujarat Prevention of Anti-Social Activites Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act".

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter alia indicate that petitioner for himself and with the aid of his associates has been carrying on criminal and anti-social activities of storing and selling country liquor and following prohibition offences have been registered in the Amraiwadi Police Station against him :

1. 884/94 Under Sections 66B, 65(A), 65(E), 81, 116(2) of the Bombay Prohibition Act; 39 ltrs. of country liquor and 40 bottles foreign liquor. The matter is pending in the Court;
2. 259/95 Under Section 66B, 65(A), 65(E), 81 of the Bombay Prohibition Act, 175 ltrs. of country liquor and 54 bottles of foreign liquor. The matter is pending in the Court;
3. 126/96 Under Sections 66B, 65(E) of the Bombay Prohibition Act, 35 ltrs. of country liquor. Investigation is in progress.

It may be noted at once that the petitioner was in judicial custody so far as present case is concerned.

It has been recited that the petitioner's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion four witnesses have been relied upon. It has been recited that on account of criminal and anti-social activity of the petitioner public order is likely to be adversely affected inasmuch as country liquor is injurious to the public health and inasmuch as in past many people have lost their lives as a result of such an activity and hence the petitioner being a bootlegger he is carrying on activity which would obstruct the maintenance of public order.

3. The ground also recite two incidents appearing from the statement recorded by the authority. The first incident is that of 28th February 1996. The witness was stopped while he was passing by Amraiwadi Swastik Four Road around 4.00 O'clock in the after-noon. The petitioner and his aids stopped the witness expressing doubt about the witness having been the police informant,

assaulted and had beaten him, with the result that the witness had shouted for help. People collected there at the shouts of the witness. At that time the petitioner had brought out his knife and threatened the witness and rushed to the people who had collected there resulting in the people dispersing from that place. The second incident is of 4th March 1996 when at about 5.00 O'clock in the after-noon the witness was present at his home and the petitioner in the company of his associate had asked him to allow storage of liquor brought by him. When the witness refused to accede to the demand of the petitioner he dragged the witness on the road and had beaten him. Here also the people collected at the shouts of the witness. Petitioner brought out razer and he, in the company of his associate, assaulted the people, resulting in the people getting dispersed.

4. It is on the aforesaid two incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner.

5. I have heard the learned Advocate for the petitioner and learned AGP for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to a conclusion that the same would affect public order. Reliance has been placed on the decision of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta, C.P., reported in 1995 (2) G.L.R. P. 1268. In that case also 5 cases were referred to in the grounds of detention. They were under Chapter XVI of the India Penal Code along with the provisions of the Arms Act. Two incidents were quoted from the cases which were referred to in the detention order. The same have been set out in paras - 11 and 12 of the citation. They may be reproduced for the purpose of comparison of the incidents in question :

"This brings us to the criminal activities of the detenu-petitioner which are said to have taken place on 10.8.1994 at 4.00 p.m. and on 12.8.1994 at 7.00 p.m. In the incident dated 10.8.1994 the petitioner is alleged to have purchased goods

worth Rs.500/- from a businessman and on the demand of the price of the goods, the petitioner is alleged to have dragged him out on the public road and not only gave a beating to him but also aimed his revolver towards the people gathered over there. Similarly, it is alleged that on 12.8.1994 at about 7.00 p.m. the detenu-petitioner stopped the witness on the road near the eastern side of Sardar Garden and beat him as the petitioner doubted that he was informing the police about the anti-social activities of the petitioner and his associates. The petitioner is also alleged to have rushed towards the people gathered there with the revolver. Taking the aforesaid two incidents and the allegations on their face value as they are. It is difficult to comprehend that they were the incidents involving public order. They were incidents directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tampo of life or the peace and tranquillity of the locality. Such casual and isolated incidents can hardly have any implications which may affect the even tampo of life or jeopardize the public order and incite people to make further breaches of the law and order which may result in subversion of the public order. As said earlier, the Act by itself is not determinant of its own gravity but it is the potentiality of the act which matters.

12. The alleged incident dated 12.8.1994 relating to the beating of some person on suspicion that he was informing the police about criminal activities of the petitioner, the allegation is sweeping without any material to support it. Neither any timely report appears to have been made about it to the police nor any offence appears to have been registered against the detenu-petitioner concerning the said incident. There remains the solitary incident dated 10.8.1994 pertaining to the alleged beating of a businessman which as said earlier directly was against an individual having no adverse impact on public at large. Besides, the solitary incident dated 10.8.1994 alone would not provide a justification to hold that the petitioner was habitually committing or attempting to commit or abetting the commission of offences as contemplated in Sec.2(c) of the Act because the

expression 'habitually' postulates a thread of continuity in the commission of offence repeatedly and persistently. However, in our considered opinion none of the aforementioned two incidents can be said to be incidents affecting public order nor from these stray and casual acts the petitioner can be branded as a dangerous person within the meaning of Sec. 2(c) of the Act, who was habitually engaged in activities adversely affecting or likely to affect adversely the maintenance of public order. Similar is the position with regard to recovery of .32 bore country-made revolver from the possession of the petitioner without any permit or licence which is an offence under Sec. 25 of the Arms Act. The said revolver was found to be rusty and had a broken barrel. Mere possession of a firearm without anything more cannot bring a case within the ambit of an act affecting public order as contemplated in Sec. 3 of the Act unless ingredients of Sec. 2(c) of the Act are also made out. From the facts discussed above it turns out that there was no material which may lead to a reasonable and definite conclusion that the detenu-petitioner was habitually engaged in criminal activities and, therefore, a dangerous person. The detaining authority thus passed the impugned order of detention against the petitioner without application of mind on the aforesaid aspects of the case and, therefore, the detention order could not be sustained."

6. The Apex Court observed that it would be necessary to determine whether besides the person being a 'dangerous person' his alleged activities fall within the ambit of the expression 'public order'. It has observed that a distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree

of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". Referring to the earlier decision in Arun Ghosh V. State of West Bengal reported in 1970 (1) SCC 98 it has been observed that the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Reference was also made to another earlier case in Piyush Kantilal Mehta V. Commissioner of Police, 1989 Supp. (1) SCC 322. It has been observed that for saying that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land. Piyush Kantilal Mehta's case (*supra*) was the case of a boot-legger. There it was made clear that merely because a detenu was a boot-legger within the meaning of Sec. 2(b) of the PASA he could not have been provisionally detained thereunder. The emphasis was with respect to whether his activities as a boot-legger would adversely affect the maintenance of the public order.

7. Mr.U.R. Bhatt, learned A.G.P. for the State has in reply referred to an earlier decision of the Apex Court in the case of Mrs.Harpreet Kaur Harvinder Singh Bedi V. State of Maharashtra & Anr., reported in AIR 1992 SC 979. On comparing the facts in this case with the facts in the above mentioned decisions of the Apex court it clearly appears that the facts of this case more resemble the facts in decision in the case of Mustakmiya Jabbarmiya shaikh V/s. M.M.Mehta, C.P. (*Supra*). As a matter of fact, it will be noticed from the two incidents which are quoted from the statements of the witnesses that the concerned witnesses were assaulted in respect of their individual acts for which there is no complaint or F.I.R. lodged. In the facts of the present case, therefore, the decision of Harpreet Kaur's case would not

be applicable. Relying upon the decision in Mustakmiya's case (Supra), this petition deserves to be allowed.

8. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Mustakmiya's case (Supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner detenu Omprakash Sardarilal Sharma shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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